

Filed for intro on 01/28/2002
SENATE BILL 2128 By
McNally

HOUSE BILL 2333
By Harwell

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 50, relative to pesticide use in schools.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 50, is amended by adding Sections 2 through 13 of this act as a new part.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Anti-microbial pesticide" or "anti-microbial" means a pesticide that is used for the control of microbial pests, including, but not limited to, viruses, bacteria, algae and protozoa, and is intended to disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms. Anti-microbial pesticides shall not include any fungicide or pesticide used on plants, turf or other vegetation or for ornamental uses.

(2) "Department" means the department of education.

(3) "Least toxic pesticide" includes boric acid and disodium octoborate tetrahydrate; silica gels; diatomaceous earth; nonvolatile insect and rodent baits in tamper resistant containers for crack and crevice treatment only; microbe-based insecticides; biological, living control agents; pesticides containing essential oils, not including synthetic pyrethrins or toxic synergists; materials for which the inert ingredients

are nontoxic and disclosed; and least toxic pesticides that qualify as exempt from the EPA (See 40 CFR, Part 152 and Federal Register March 6, 1996, page 8870.). Least toxic pesticide does not include a pesticide that: is determined by the U.S.

Environmental Protection Agency as a probable, likely, or known carcinogen or endocrine disruptor; is a mutagen, reproductive toxin, developmental neurotoxin, or immune system toxin; is classified by the U.S. Environmental Protection Agency as a toxicity I or II pesticide; is in the organophosphate or carbamate chemical family; or contains inert ingredients categorized as "List 1: Inerts of Toxicological Concern." Least toxic pesticide does not include any application of pesticide using tenting, fogging, or baseboard spray application.

(4) "Pesticide" means any substance or mixture of substances, including herbicides and bait stations, intended for preventing, destroying, repelling, or mitigating any pest; use as a plant regulator, defoliants, or desiccant; or use as a spray adjuvant such as a wetting agent or adhesive. Pesticide does not include: an anti-microbial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning purposes.

SECTION 3. Every local education agency shall develop and transmit to the department a pest management program.

SECTION 4. The department shall develop a plan for implementation by each local education agency that will operate to reduce or eliminate, whenever possible, the exposure of children in public schools to chemical pesticides. The department shall submit an annual report to the general assembly describing the efforts taken and the progress made toward reducing pesticide use in public schools.

SECTION 5. The department shall appoint a contact person to assume responsibility for reporting to the general assembly, oversight of pest management practices and record keeping requirements.

SECTION 6. To receive an exemption from developing a program, a local education agency shall present to the department, a finding demonstrating the economic burden of implementing the program.

SECTION 7. Pesticides shall not be sprayed, released, deposited or applied indoors while children are on the property of, or located in, a public school except as provided for in this act.

SECTION 8. Not less than seventy-two (72) hours before a pesticide, other than a least toxic pesticide or anti-microbial, is applied in a public school or on the grounds of a public school, the school shall provide, to each parent and guardian of each enrolled child and to each staff member of the school, notice that includes:

(1) The common name, trade name, and U.S. Environmental Protection Agency registration number of the pesticide;

(2) A description of the location of the application of the pesticide;

(3) A description of the date and time of application, except that, in the case of outdoor pesticide applications, each notice shall include alternative dates on which the outdoor pesticide applications may take place if the preceding date is canceled;

(4) The statement: "Where possible, persons who potentially are sensitive, such as pregnant women and infants (less than two (2) years old), should avoid any unnecessary pesticide exposure";

(5) A description of potential adverse effects of the pesticide based on the material safety data sheet of the pesticide;

(6) A description of the reasons for the application of the pesticide;

(7) The name and telephone number of the contact person of the local education agency; and

(8) Any additional warning information related to the pesticide.

SECTION 9.

(a) Notice shall be provided to the parents or guardians of children enrolled in the school and to the staff, by at least one of the following means:

- (1) Written notice sent home with the child and provided to staff;
- (2) A telephone call;
- (3) Direct contact; or
- (4) Written notice mailed at least one (1) week before the application.

(b) If the date of the application of the pesticide needs to be rescheduled, the school shall reissue the notice under this section for the new date of application.

SECTION 10. The notice provisions shall apply at all times except during periods when the school shall be closed for at least five (5) consecutive days after the spraying, release, deposit or application.

SECTION 11. At least seventy-two (72) hours before a pesticide is used in a public school, other than a least toxic pesticide or an anti-microbial, the school shall post notice signs in a prominent place that is in or adjacent to the location to be treated and at each entrance to the building or grounds to be treated. The sign shall remain posted for at least seventy-two (72) hours after the end of the treatment and be of uniform design with a symbol people who cannot read can understand.

SECTION 12.

(a) If the director of schools determines that a human health emergency warrants the use of a pesticide not otherwise allowed under this act, or warrants its use sooner than two days after providing the required standard written notification, the director may apply for a single-use waiver from the appropriate board of health.

(b) The board shall make a determination within twenty-four (24) hours of the waiver application as to whether the waiver shall be granted based upon the following criteria:

(1) whether the pest situation poses an immediate threat to human health; and

(2) whether no viable alternatives to the use of chemical pesticides exist.

(c) Not later than the earlier of the time that is twenty-four (24) hours after the pesticide is applied at a school or on the morning of the next day the school is open, the school shall provide to the board of health, to each parent or guardian of children enrolled, and to staff members of the school, notice of the application of the pesticide for emergency pest control that includes:

(1) The information required for a notice under Section 8 of this act;

(2) A description of the problem and the factors that qualified the problem as an emergency that threatened the health or safety of a child or staff member; and

(3) A description of the steps the local education agency will take in the future to avoid emergency application of a pesticide under this section.

(d) A sign warning of the pesticide application shall be posted at the time of the pesticide application;

SECTION 13. Pesticides shall not be stored in facilities to which children have access.

SECTION 14. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2002, the public welfare requiring it.